

## **XXIX. SHORELAND PROTECTION DISTRICT (OVERLAY) (Added March 2003)**

### **AUTHORITY**

This Section is enacted in accordance with the provisions of RSA 674:16-17 and RSA 674:20-21.

#### **I. PURPOSE**

Pursuant to RSA 674:16-21 the Town of Newton hereby adopts the Shoreland Protection District and accompanying regulations in order to protect and promote public health, resource conservation and the general welfare and to:

- a) Protect, maintain and enhance the water quality of ponds, rivers and their tributaries in the Town of Newton, and to ensure their continued availability as a resource and potential use as a public water supply;
- b) Conserve and protect aquatic and terrestrial habitat associated with pond and river areas;
- c) Preserve and enhance those recreational and aesthetic values associated with the natural shoreline and river environment;
- d) Encourage those uses that can be appropriately located adjacent to shorelines.

#### **II. DISTRICT BOUNDARIES**

The Newton Shoreland Protection District is defined to include all of the following:

- a) The areas of land within 150 feet horizontal distance of the shoreline of Country Pond.
- b) The areas of land within 100 feet horizontal distance of the seasonal high water level of all brooks and streams within the Town which appear on U.S.G.S. 7.5" (scale 1:24000) quadrangle maps for the Town of Newton, as revised.

#### **III. PERMITTED USES**

The following uses are permitted under this Section:

- a) Any use otherwise permitted by the Zoning Ordinance and by State and Federal laws that does not involve the erection of a structure, and does not alter the surface configuration of the land by the addition of fill or by dredging, except as a common treatment associated with a permitted use, and provided that a buffer strip of natural vegetation 75 feet in width along Country Pond, and 50 feet in width elsewhere, be maintained between the area of use and the shoreline.
- b) Agriculture, including grazing, hay production, truck gardening, and silage production, provided that such use is shown not to cause significant increases in surface or groundwater contamination by pesticides or other toxic or hazardous substances and that such use will not cause or contribute to soil erosion and stream sedimentation.
- c) Forestry and tree farming to include the construction of access roads for said purpose. Within the Shoreland Protection District the cutting of trees shall be limited to fifty percent (50%) of live trees in a 20-year period.
- d) Wildlife habitat development and management.

- e) Recreational uses consistent with the purpose and intent of this Section.
- f) Conservation areas and nature trails.
- g) Water impoundment and the construction of well water supplies.
- h) Drainage ways to include streams, creeks, or other paths of normal runoff water and common agricultural land drainage.
- i) The construction of fences, footbridges, catwalks, and wharves only, provided:
  - 1) Said structures are constructed on posts or pilings so as to permit the unobstructed flow of water;
  - 2) Structures do not obstruct navigation on tidal creeks;
  - 3) The natural contour of the shoreline is preserved;
  - 4) The Planning Board has reviewed and approved the proposed construction.

**Conflicting Provisions.** In the event that the provisions of the Shoreland Protection District are found to conflict with other provisions of the Newton Zoning and Land Use Ordinance, the more restrictive shall apply.

**Effect on Lot Size.** Areas within the Shoreland Protection District may be considered as part of a minimum lot size normally required by the Zoning Ordinance and Subdivision Regulations of the Town of Newton.

**Special Exception for Lots of Record.** Upon application of the Board of Adjustment, a special exception shall be granted to permit the erection of a structure within the Shoreland Protection District provided that all of the following conditions are found to exist.

- a) The lot upon which an exception is sought was an official lot of record, as recorded in the Rockingham County Registry of Deeds, prior to the date on which this amendment was posted and published in the Town.
- b) The use for which the exception is sought cannot feasibly be carried out on a portion or portions of the lot which are outside the Shoreland Protection District.
- c) Due to the provisions of the Shoreland Protection District, no reasonable and economically viable use of the lot can be made without the exception.
- d) The design and construction of the proposed use will, to the extent practical, be consistent with the purpose and intent of this Section.

#### IV. CONDITIONAL USES

A Conditional Use Permit may be granted by the Planning Board (RSA 674:21 II) for the construction of roads and other access ways, and for pipelines, power lines, and other transmission lines provided that all of the following conditions are found to exist;

- a) The proposed construction is essential to the productive use of land not within the Shoreland Protection District.

- b) Design and construction methods will be such as to minimize detrimental impact upon the Shoreland Protection District.
- c) The proposed construction design of power lines, pipelines, or other transmission lines includes provisions for restoration of the site as nearly as possible to its original grade and condition.
- d) No alternative route which does not cross a Shoreland Protection District nor has less detrimental impact on the Shoreland Protection District is feasible.
- e) Economic advantage alone is not reason for proposed construction.

Prior to the granting of a Conditional Use Permit under this Section, the applicant shall agree to submit a performance security to the Board of Selectmen. The Security shall be submitted in a form and amount, with surety and conditions satisfactory to the Selectmen and approved by Town Counsel to ensure that the construction has been carried out in accordance with the approved design. The Security shall be submitted and approved prior to issuance of any permit authorizing construction.

The Planning Board may require the applicant to submit an environmental impact assessment when necessary to evaluate an application made under this Section. The cost of this assessment shall be borne by the applicant. The Planning Board may also assess the applicant reasonable fees to cover the costs of other special investigative studies and for the review of documents required by particular applications.

### **XXX. ELDERLY HOUSING (Added March 2003)**

#### Authority

In accordance with RSA 674:21 c, f, h and k, this ordinance is adopted to permit the establishment and construction of elderly housing in Newton. Consistent with the provisions of RSA 674:21, the Planning Board is hereby authorized to grant a conditional use permit for elderly housing in accordance with the provisions of this ordinance.

#### Purpose

This ordinance seeks to address the housing needs of the elderly and to encourage the development of such housing to meet the needs of persons who have lived in Newton and who would like to continue to reside in Town, but who are no longer able or interested in residing in and maintaining a conventional residence. The ordinance encourages the development of elderly housing by permitting such housing to be developed at a unit density and with a certain amount of planning flexibility that is greater than that permitted for conventional single family housing development.

The Townspeople recognize that one aspect of elderly housing development is that the housing built will continue to be put to this use in perpetuity, consistent with restrictive covenants and consistent with the provisions of state and federal law that permit housing units to be restricted by age.

#### I. Definitions

- A. Elderly Housing Development: Housing contained in a development intended for occupancy by people 55 years of age and older, and which features small single family units, apartments and/or condominiums.

B. Bedroom: a room with an interior door and a closet.

II. General Standards: All elderly housing developments shall conform to the following standards:

- a. Elderly housing developments shall be permitted only in the Residential zoning district. All elderly housing developments shall contain a minimum of 20 acres and shall have at least one hundred fifty feet (150') of frontage on a public road.
- b. The total number of elderly housing units in the Town of Newton shall not exceed ten percent of the total dwelling units then existing in the Town of Newton.

The maximum allowable number of bedrooms allowed on a site is four bedrooms per acre of upland,

- c. Dwelling units shall be specifically designed to provide housing for elderly residents. Units shall have a maximum of two bedrooms, may not exceed thirty-five feet (35') in height, and may be either one or two stories. Buildings shall be separated by a minimum space of thirty-five feet. No building shall exceed 10,000 square feet in footprint. No individual unit shall exceed 1,500 square feet of living space, and no single-family building shall exceed 1,500 square feet in footprint. A maximum of six units shall be allowed per building.
- d. Adequate on site space shall be provided for off-street parking for two vehicles per dwelling unit.
- e. Building massing and style shall be distinctly residential in character, drawing on historical design elements that are consistent with rural New England architecture and which feature characteristics such as pitched roofs, clapboard or shingle siding, raised panel exterior doors and divided light windows. All such elderly housing developments shall be designed and constructed to compliment and harmonize with the surrounding areas, particularly with regard to the size and scale of the development and its prominence and visibility to the community generally and to surrounding neighborhoods in particular.
- f. Except as noted in the proviso contained in this sub-paragraph, all such elderly housing developments shall comply in all respects with the Town of Newton's Zoning Ordinance, Site Plan Review Regulations and/or Subdivision Regulations except however, that elderly housing units shall not be subject to school impact fees per Newton Zoning Ordinance section XXVI.
- g. Dwelling units may be owner-occupied or rented. However, all permanent residents of all elderly housing units shall be at least 55 years of age.
- h. The design and site layout of all such elderly housing developments shall compliment and harmonize with the rural character of the Town of Newton, shall maximize the privacy of dwelling units and preserve the natural character of the land.
- i. All such elderly housing development shall make provision for pedestrian access within the development and, to the extent possible, to off-site community facilities.

- j. All such elderly housing developments shall be landscaped to enhance their compatibility with surrounding areas, with emphasis given to the utilization of natural features wherever possible.
- k. The perimeter of all such elderly housing developments shall be treated with a landscaped buffer zone of a minimum of twenty-five feet (25') which may consist in whole or in part of existing natural growth.
- l. The Planning Board may require that all roads within the development shall be privately owned and built according to Town standards.
- m. The Planning Board retains the right to approve the specific road and structure layouts for the purpose of the health, safety, and welfare of the town as well as for efficiency and aesthetic variety and quality of design.
- n. The applicant shall demonstrate that all units have been designed to meet the needs and accessibility requirements of the elderly as reflected in the HUD's Fair Housing Accessibility Guidelines.

All units shall be built in accordance with applicable federal, state and local building codes.

III. Common Land/Open Space. In every Elderly Housing development, common land/open space shall be set aside and covenanted to be maintained permanently as open space. The required amount of open space for all Elderly Housing developments shall be no less than 25% of the buildable area of the development. Buildable area is defined as all soils, excluding poorly and very poorly drained soils, alluvial soils (subject to flooding), water bodies, and slopes greater than 25%.

- a. Use of Common Land. Such common land shall be restricted to open space recreational uses such as park, swimming pool, tennis courts, golf course, or conservation. While the setbacks, front, rear, and side, are considered part of the common land, none of the above uses shall be allowed within these areas, nor any other uses that would disturb the natural vegetation within these areas. These restrictions of the use of the common land (including the landscaped buffered area), shall be stated in the covenants running with the land.
- b. Access to Open space/common land. Such common land shall have suitable access to a road, or walking trail, within the development.
- c. Protection of Common Land. Open space, common areas, common facilities, private roadways, and other features within the Elderly Housing development shall be protected by covenants running with the land and shall be conveyed by the property owners to a homeowners association so as to guarantee the following:
  - i. The continued use of land for the intended purposes.
  - ii. Continuity of proper maintenance for those portions of the development requiring maintenance.
  - iii. The availability of funds required for such maintenance.
  - iv. Recovery for loss sustained as a result of casualty, condemnation or otherwise.
  - v. Creation of a homeowners association or tenancy-in-common or similar form of ownership, with automatic membership and obligation of the residents of the Elderly Housing development upon conveyance of title or lease to single dwelling units. Homeowners association, tenancy-in-

common, or similar form of ownership shall include lien provisions and shall be subject to review and approval by the Planning Board.

- d. It shall be the responsibility of the developer/builder of each such elderly housing development to establish a Home Owner's Association and to prepare and adopt appropriate Articles and By-Laws which are to be submitted in advance to the Planning Board and Town Counsel for their review and approval. In preparing the Articles and By-Laws, particular consideration shall be given to accommodating the unique needs of the elderly citizens and to ensuring that residents of such developments are guaranteed adequate and appropriate services. The creation of the Home Owner's Association and the Articles and By-Laws shall be at the sole expense of the developer/builder and the costs of the review by the Planning Board and Town Counsel shall also be born by the developer/builder. Any association formed for the purpose of elderly housing must have stipulated in their By-Laws and Declaration of Covenants that the Association will at all times be in compliance with current Newton's ordinances governing elderly housing.

The Applicant/Owner shall incorporate a written enforcement mechanism satisfactory to the Planning Board and its legal counsel whereby on an annual basis, a written age based census of the existing Occupants shall be provided to the Board of Selectmen. Upon any change in ownership or tenancy, the age of any new Occupants shall be given to the Board of Selectmen within thirty (30) days of tenancy/ownership changes.

- e. The Planning Board shall maintain and exercise the authority to approve or disapprove all proposed elderly housing developments. The Planning Board shall act reasonably in exercising such discretionary authority but shall take into consideration such factors, for example, as: the health, safety and general welfare of the citizens of Newton; the aesthetic impact on immediately surrounding areas; whether the design is adequate to meet the unique needs of elderly residents; whether the Articles and By-Laws operate to serve the unique needs of elderly residents; the burdens created by additional demands on Town services; and whether the proposed development complies with the requirements of this Elderly Housing Ordinance, as well as, with the requirement of Newton's Zoning Ordinance and Subdivision and Site Plan Regulations.
- f. Residency restrictions for residential projects approved under the Elderly Housing Ordinance shall be accomplished by restrictions recorded in deeds, Condominium Declarations, and/or other documents recorded at the Rockingham County Registry of Deeds. All deeds and covenants shall be subject to review by Town Counsel at the sole expense of the developer/builder, and shall be approved by the Planning Board. Covenants shall expressly provide that they may be specifically enforced by the Town, whether by injunction relief or otherwise. Covenants shall be signed by the Planning Board, and shall contain language specifying that Board approval is required for any subsequent changes to the covenants. Covenants shall expressly provide that they shall not be amended or modified, nor waivers granted there under, without the prior written approval of the Planning Board.
- g. The following terms shall have the following meanings for the purpose of interpreting these Elderly Housing Regulations:

- Elderly Housing Development: Housing contained in a development intended for occupancy by people 55 years of age and older, and which features small single family units, apartments and/or condominiums.
- Bedroom: a room with an interior door and a closet.

IV. The Planning Board may grant waivers from the standards set forth in this ordinance in its discretion to encourage this type of housing development provided that the general purposes of the ordinance are satisfied.